

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: THURSDAY, OCTOBER 30, 1997
TIME: 9:00 A.M.
PLACE: PRINCE CLUBHOUSE
53-900 KUHIO HWY
PRINCEVILLE, KAUAI, HI 96722

Chairperson Michael D. Wilson called the meeting of the Board of Land and Natural Resources to order at 9:27 a.m. The following were in attendance:

MEMBERS:

Mr. Michael D. Wilson	Ms. Lynn P. McCrory
Mr. Christopher J. Yuen (excused at 2:30 p.m.)	Ms. Kathryn W. Inouye
Mr. William Kennison	

STAFF:

Mr. Dean Uchida, Land Division
Mr. Sam Lee, Land Division
Mr. Mike Laureta, Land Division
Mr. Howard Gehring, Division of Boating and Ocean Recreation
Mr. Jeff Bearman, Division of Boating and Ocean Recreation
Ms. Carol She', Division of Boating and Ocean Recreation

OTHERS:

Ms. Pamela Matsukawa, Attorney General's	Mr. John White, Whitey's
Ms. Michelle Matson	Mr. Geoff Wall, Hanalei Sea Tours
Mr. Michael Sheehan, Sheehans Boatyard	Mr. Ralph Young, Hanalei Sport Fishing
Mr. Mark Weaver, Former Owner of Raft Riders	Mr. Steve Cole, Na Pali Adventure
Mr. John Isobe, President, KEDB	Ms. Betsy Wilson, Lady Ann Cruises
Mr. Dee Crowell, Kauai Planning Department	Mr. Lono Brady
Ms. Ronnie Grover, Hanalei Sea Tours	Mr. Harold Bronstein
Mr. Rick Marvin, Bluewater Sailing	Ms. Carol Wilcox
Mr. Byron Fears, Paradise Adventure Cruises	Mr. John Reppun
Mr. Robert Johnson, Capt. Na Pali Boat Cruises	Ms. Ann Leighton
Ms. Maka'ala Brooks, Hui Ho'omalua I Ka Aina	Mr. Charlie Cowden, Hanalei Surf Co.
Mr. Brian Lansing, Whitey's Boat Cruises	Ms. Barbara Robeson
Mr. Scott Robeson	Mr. Bob Butler, Captain Sundown
Mr. Jeff Chandler, Hui Ho'omalua I Ka Aina	

ITEM D-1: WITHDRAWAL FROM EXECUTIVE ORDER NO. 1589 AND SALE OF STATE LAND TO THE COUNTY OF HAWAII FOR ROAD WIDENING PURPOSES AT WAIAHA 1ST AND 2ND, NORTH KONA, HAWAII, TMKs: (3RD DIV.) 7-5-14: 16 AND 7-5-15: 08

Mr. Dean Uchida, Acting Administrator of the Land Division presented the staff submittal recommending the Board's approval for the direct sale of land to the County of Hawaii and the issuance of an immediate construction of right-of-entry subject to terms and conditions.

No public testimony was presented.

Unanimously approved as submitted (Yuen/Kennison).

ITEM D-8: CONSERVATION DISTRICT USE PERMIT APPLICATION (HA-2865) FOR THE CONSTRUCTION OF A TWO-STORY RESIDENCE AND ASSOCIATED IMPROVEMENTS AT PUNA, HAWAII, TMK: 1-3-08: 03

Mr. Uchida said this Conservation District Use Permit Application (CDUA) was sent around to different agencies and concerns were raised on wastewater, water pollution and noise. He said staff is analyzing the proposal and found that the proposed use is an identified use in the resource subzone and a negative declaration has been determined for the proposal with respect to the wastewater system. The applicant proposes to do an individual wastewater system with a 1,000 gallon septic tank and a 12,000 gallon water catchment system. He said staff's recommendation is that the Board approve this application for a single-family residence subject to standard conditions.

Member McCrory asked if the wastewater system was approved by the Department of Health (DOH). Mr. Uchida stated that the proposed application is subject to DOH approval.

No public testimony was presented.

Unanimously approved as submitted (Yuen/Kennison).

ITEM D-2: AMEND REVOCABLE PERMIT TO BE ISSUED TO ROSS K. FERNANDEZ AT POR. OF KEKAHA, WAIMEA, KAUAI, TMKs: 1-2-2: POR. 32 AND 1-2-12: 38

Mr. Uchida said in August of 1997, the Board authorized a revocable permit for pasture purposes to Mr. Roy Fernandez covering approximately 11.5

acres. He said there's an adjoining lot that blocks this property and that Mr. Fernandez has indicated a willingness to include this as part of his permit. Mr. Uchida stated that it has been a difficult property to maintain because of unauthorized access dumping. Staff's recommendation is that Board amend the Land Board action of August 8, 1997 by including the 5.8 acre piece of property subject to conditions.

In response to Member McCrory's question regarding rental increase for the additional five acres, Mr. Uchida stated that he will have staff look at it based on the additional acreage and add this to the permit as a conditions

No public testimony was presented.

Unanimously approved with amendments. (McCrory/Yuen)

ITEM D-3: AMEND THE CHARACTER OF USE OF GENERAL LEASE #S-5385, SITUATE AT WAIAKEA, HAWAII, TMK: (3) 2-3-32-4

Mr. Uchida withdrew this item (Item D-3).

Unanimously approved to withdraw Item D-3. (Yuen/Kennison)

ITEM D-4: ISSUANCE OF A REVOCABLE PERMIT TO CLARK HATCH FITNESS CENTER FOR A PASSIVE PEOPLE AND PET THEME PARK AT FORT RUGER, DIAMOND HEAD, HONOLULU OAHU, TMK: 1ST/3-1-42: 12

Mr. Uchida stated that the applicant, Clark Hatch Fitness Center, is proposing to create a park, incur all expenses, liability insurance, refuse clean up & maintenance as well as keep it open for the public to take their pet or recreate on this piece of land. He said the application was sent to the City & County, Department of Parks & Recreation and that they had no objections provided that the applicant comply with City Standards and the Americans with Disabilities Act Accessibility Guidelines. The Waialae-Kahala Neighborhood Board met and voted in favor of this issue at their meeting of September 18, 1997. He said staff's recommendation is that the Board approve this revocable permit subject to standard conditions and that the rent be gratis.

Chairperson Wilson requested that staff present this to the Diamond Head Advisory Committee for their review and comments. He stated that Michelle Matson, former President of the Diamond Head Advisory Committee (present at meeting) and/or Ralston Nagata can assist in getting this proposal to the Advisory Committee.

No public testimony was presented.

Unanimously approved as submitted. (McCrorry/Inouye)

ITEM D-5: REQUEST FOR PERPETUAL, NON-EXCLUSIVE EASEMENT FOR ACCESS AND UTILITY PURPOSES OVER GOVERNMENT LAND SITUATE WAIMANALO, KOOLAUPOKO, OAHU, TMK: 4-1-010: 17

Mr. Uchida withdrew this item (Item D-5).

Unanimously approved to withdraw Item D-5. (Inouye/McCrory)

ITEM D-6: TIME EXTENSION REQUEST - CONSERVATION DISTRICT USE PERMIT OA-591A FOR MASTER PLAN ELEMENTS OF WAIMEA FALLS PARK, OAHU, HAWAII

Mr. Uchida said in 1989, the Board approved this CDUA and that the deadline was extended once to April 27, 1997. He said the staff's recommendation is that the Board approve a time extension of three more years from April 27, 1997 to April 27, 2000, so that the applicant can complete construction of the administration office and maintenance building subject to the conditions imposed under prior CDUAs.

No public testimony was presented.

Unanimously approved as submitted. (Inouye/McCrory)

ITEM D-7: CONSERVATION DISTRICT USE APPLICATION (KA-2863) FOR POLYNESIAN AGROFORESTRY, KALIHIWAI/ANINI, NEAR KILAUEA, KAUAI, TMKs: 5-3-06: 15 AND 20

Mr. Uchida said this CDUA includes a 14 acre parcel at Kalihiwai/Anini on Kauai. He said the proposed use area is about 11 acres, and is in the limited subzone of the Conservation District. The applicant has been working with the State's Forestry Stewardship Program to move exotic vegetation from the property and replace it with native vegetation. He said the applicant will be implementing the Best Management Practices under the guidance of the Division of Forestry and Wildlife (DOFAW). Staff's recommendation is that the Board approve the CDUA for a Polynesian Agroforestry project subject to conditions.

Member McCrorry suggested that staff contact community organization in the

area for their input and asked if the applicants were present to answer some questions. Mr Uchida stated that the applicants were not present. Chairperson Wilson suggested deferring the item since the applicants were unavailable to address questions.

Members Yuen and McCrory were concerned about spending \$28,000 of public funds to assist the landowner to do what appears to be a landscaping project. Mr. Uchida stated that he will check with DOFAW on what the rationale is in spending public funds for the proposed activity. He further stated that he will obtain input from community organizations and bring this issue back to the Board at the second meeting in November.

Unanimously approved to defer Item D-7. (McCrory/Yuen)

ITEM D-9: CERTIFICATION OF ELECTION AND APPOINTMENT OF SOIL AND WATER CONSERVATION DISTRICT DIRECTORS.

Mr. Uchida said this is a request to appoint Mr. Jeffrey Rivera, Weed Control Supervisor for Amfac, as director of the East Kauai Soil and Water Conservation District.

Unanimously approved as submitted. (McCrory/Inouye)

ITEM J-2: REQUEST THAT THE BOARD OF LAND AND NATURAL RESOURCES APPROVE THE HEARING OFFICER'S RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER REGARDING THE PETITION OF H2O TROPICAL TOURS, INC. FOR A DECLARATORY RULING

Mr. Howard Gehring, Acting Administrator of the Division of Boating and Ocean Recreation stated that the Hearing Officer's determination is the finding that H2O Tropical Tours Inc's "Pro Jet" was in fact a "Thrillcraft as defined in Section 200-23, Hawaii Revised Statutes (HRS). Staff's recommendation is that the Board approve the Hearing Officer's findings and the petition of H2O Tropical Tours, Inc. regarding a position on the declaratory ruling.

Member McCrory inquired as to the definition of the ProJet as a Thrillcraft. She also asked if the ruling is only applicable to H2O Tropical Tours, Inc. Mr. Gehring said that it was for this particular watercraft and that sets a precedent for determination of other crafts. He apologized for not quoting the rules exactly but recalled it saying that the general length is 13 feet. In this case, the Pro Jet was 13 feet 10 inches. He explained that over the years, the

definition of Thrillcraft has changed such that the current statute which overrides anything that isn't in the existing rules, has gone from one to multiple to any number of persons operating a vessel that has certain characteristics. He said he would need to seek legal determination from the Department of the Attorney General's (AGs) to look into that this applies in general to all crafts. Chairperson Wilson stated that he thought the purpose of the declaratory rule is to make a decision that applies to crafts that are called Zodiac Pro Jet.

Unanimously approved as submitted. (Kennison/Yuen)

ITEM J-1: REQUEST FOR PERMISSION TO CONDUCT PUBLIC HEARINGS TO AMEND TITLE 13, CHAPTER 256, HAWAII ADMINISTRATIVE RULES

Mr. Gehring explained some of the changes and recommended that the Board approve a public hearing on the proposed amendments including revisions made and recommended by the Attorney General and to authorize the Chairperson to appoint a hearing master to conduct and receive testimony for this public hearing.

A motion was made at 10:30 a.m. to go into Executive Session to consult with the Attorney General. (Kennison/McCrory) The meeting was reconvened at 11:05 a.m.

Member McCrory questioned section 13-256-32 (4) that reads: "Demonstrates a satisfactory knowledge of the waters through presentation of a log of ocean kayak trips performed in the Na Pali Coast restricted area during the preceding six-month period." She asked why this section was being deleted. Ms. Carol She' responded that these proposed changes go back to Mr. Dave Parsons and his input and discussions with the Community.

There was discussion about section 13-256-34 (4) "a copy of the tax clearance certificate from both the State and County." Member McCrory suggested adding a requirement that says it had to be within 90 days, her concern was that someone could have gotten a tax clearance certificate years ago. Deputy Attorney General (DAG) Pamela Matsukawa said it should reflect the most current applicable certificate. Member Inouye questioned if the 90 day requirement would be appropriate if it was for the current tax year. DAG Matsukawa stated that she was not sure how this works. Member Inouye asked if these were citizen or business taxes, her concern was that businesses require Federal taxes as well. Chairperson Wilson suggested changing it to read: "a copy of the tax clearance certificate from the State, County and Federal".

Member McCrory stated that she would like to see different phrasing that limits the size of vessels for section 13-256-36 (9) "The department may authorize a holder of an existing commercial use permit to substitute a larger vessel for a smaller vessel so long as the new vessel does not exceed the twenty-five person carrying capacity limit, nor the fifty passengers per day limitation." Mr. Gehring suggested taking the largest vessel we have today and setting that as a limit.

Member Yuen inquired as to whether the fifteen permits under section 13-256-36 (2) "No more than fifteen commercial use permits shall be issued for motorized vessels for the Hanalei River Mouth." apply to boats or operators. Ms. She' said her understanding is that there is no limit on the number of boats. Mr. Gehring added that it would be their choice to use one boat with twenty-five passengers twice a day or multiple small boats. Mr. Yuen asked if there is a limit on permits being held by one corporation. Mr. Gehring responded that we do in fact have corporations that have multiple boats and the group that we met with earlier this year recommended that we come up with the number of boats in these corporations and decide how we are going to distribute these permits.

Member Inouye questioned section 13-256-32 (c) "The department shall establish an advisory committee of not less than three commercial use permit holders to review the qualifications of applicants under this section and make recommendations for the issuing of commercial use permits required by this section. The advisory committee members must hold commercial use permits issued pursuant to this subchapter. The department may seek recommendations for membership on the advisory committee from the North Shore Charter Boat Association. Members of the advisory committee shall have not less than three years experience in their area of specialty operating in the North Shore Kauai Ocean Recreation Management Area." She suggested an appeal process for applicants who are not recommended for a permit by the advisory committee. She said her concern is to eliminate any personal interests or conflicts.

Member McCrory announced that there were comments and questions in regards to whether or not there was a conflict of interest on her part as President of Pahio Management, Inc. She said that she had copies available of the Ethics Commission's determination stating there is no conflict of interest. She stated that the documents were submitted to the AGs for review and it was also cleared by them.

There was discussion about section 13-256-36 (6) "No commercial vessel shall carry more than fifty paying or non-paying passengers per day." and section (7) "A maximum of 750 passengers per day shall be allowed to embark and

disembark from the Hanalei River Mouth." DAG Matsukawa and Mr. Gehring clarified that in subsection (6) the word *vessel* should be replaced with the words *permit holder*. Member McCrory said her understanding was that there would not be a limit of fifty passengers per day maximum. She said the intent was not to place names or numbers of passengers in the rules. Member Yuen concurred with Member McCrory and added that we need a criteria that states how we are going to allocate the 750 passengers. Chairperson Wilson asked Member McCrory what her reservation was in limiting 50 passengers per day maximum. Member McCrory responded that there are very few companies operating at 50 passengers per day. She said there are currently about seven companies operating in the area of 100 - 200+ passengers. She stated that at some point we should deal with the realism of businesses having more than 50 passengers and at the same time keep it down to 750 passengers per day.

Mr. Gehring asked the testifiers who have 200 passengers to provide some input on the number of vessels they have and if those vessels can be broken down so that it could compete with others as it relates to the available permits.

The following people testified in opposition of a Public Hearing to amend Title 13- 256 for various reasons, the majority requesting a proposed environmental study: Testimonies submitted (**)

**Barbara Robeson
Makaala Brooks
Scott Robeson

The following people testified in favor of a Public Hearing to amend Title 13-256:

Michael Sheehan
** John Isobe
** Ronnie Grover (15-18 pax, 23' - 30' vessels, 9 vessels total)
** Dee Crowell
** Byron Fears (17 pax, 35' para-catamaran, 3 times a day)
Brian Lansing (45 pax, 34' catamaran, 3 times a day in the summer/twice in the winter)

The following people testified but did not state if they were opposed or in favor of a Public Hearing to amend Title 13-256:

Mark Weaver (15 pax, 23' zodiac, twice a day)
** Rick Marvin (12 pax, Sailboat, twice a day)

** Bob Butler

There was some discussion by Board Members before Member Yuen was excused.

Member Yuen expressed his concern about the allocation of the 750 passengers. He said there are two steps that are going to evolve here according to the way the rules are set up, 1) selecting fifteen permittees, and 2) dividing 750 seats among the fifteen permit holders. He stated that when we went through this earlier, there were 15 permits at 50 passengers each which automatically allocates the 750, but, that was not the intent of our Kauai Board Member, who has been very involved in this. He also stated that he would like to see an environmental study done.

Member McCrory suggested leaving the decision of allocation with the Advisory Committee and adding additional non-permitted boaters to the Advisory Committee.

Member Yuen stated that he did not think the Department can delegate the final decision to an Advisory Committee. He said the Board needs to spell out some guidelines as to how this will be done, or else the Advisory Committee becomes a "Lord of the Flies" situation. He said clearly from the testimony we heard today there are disagreements about who would get priority and what is fair. He said we need to drop the idea of permitted boaters being on the Advisory Committee.

Member McCrory referred back to the draft that came out in September. She said the intent of that draft was they those would be interim rules and that it would be valid for a three-year period. In that three-year period we would be moving forward on a community-based planning process. In this particular case we were looking at limits of acceptable change and public/community participation. She said within the rules, the allocation would be amongst the people who were currently in business, and definitely the HEMP people first.

Member Yuen was excused at 2:30 p.m.

Chairperson Wilson announced that a lunch break would be taken by the Board. The meeting was reconvened at 3:30 p.m.

The following people testified in opposition of a Public Hearing to amend Title 13-256 for various reasons, the majority requesting a proposed environmental review:

Betsy Wilson
John White
Ralph Young
Harold Bronstein
Jeff Chandler

The following people testified in favor of a Public Hearing to amend Title 13-256:

Steve Cole
Carol Wilcox
Ann Leighton

The following people testified but did not state if they were opposed or in favor a Public Hearing to amend Title 13-256:

Geoff Wall
Lono Brady
John Reppun
Robert Johnson
Charlie Cowden

Chairperson Wilson concluded the taking of testimony and asked if there were any more discussion by the members.

Member McCrory moved to approve Item J-2 with the following amendments:

- 1) Amend section 13-256-33 (b) to read: All commercial use permits shall be valid for not more than three years. There after the Department can issue permits up to the numbers provided in the subchapter for a one year period or until these rules are amended in clearance with the community based planning process such as the LAC process and the completion of a environmental study within a three year period. All of this is to be administered by the department.
- 2) Add to Section 13-256-32 (c) additional advisory committee members will be appointed by the BLNR, that number not set.

Chairperson Wilson agreed with the community that the full Land Board should be present at the public hearing. He stated that we also have the

benefit of working with the Planning Commission and at the same time go through a number of concerns that have been raised today. He further stated that the environmental issues are very important and should be contemplated within the rules. He said he will second the motion that has been made with amendments.

Member Kennison said the discussion today was very enlightening. He said if the Land Board is part of the public hearing process we will be able to make a better informational decision and be able to put everything into perspective. He said he would also like to second the motion.

Member Inouye said she would like to see the process ongoing, and in doing so one of the things that was made clear today is that the process be kept open. She said some people stated earlier that they wanted to see a joint public hearing held with the Land Board Members present and in seeing how important it is to the community and to the long term future of Hanalei she would be happy to participate so she will be voting for the motion.

ACTION: Unanimously approved with amendments (McCrary/Wilson)

There being no further business, Chairperson Wilson adjourned the meeting at 5:37 p.m.

Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Transcribed and submitted,



Kimberly C. Kelihoomalau

Approved for submittal:



MICHAEL D. WILSON

Chairperson

Board of Land and Natural Resources